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California Highway Patrol

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11

12 **SANDRA KIRKMAN AND CARLOS**
13 **ALANIZ, INDIVIDUALLY AND AS**
14 **SUCCESSORS-IN-INTEREST TO**
JOHN ALANIZ, DECEASED,

Plaintiffs,

15 v.
16

17 **STATE OF CALIFORNIA; RAMON**
18 **SILVA; AND DOES 1-10,**
INCLUSIVE,

19 Defendants,
20

2:23-cv-07532-DMG-SSC

**STIPULATED PROTECTIVE
ORDER**

Trial Date: Not yet set.
Action Filed: July 28, 2023

21 **1. INTRODUCTION**

22 1.1 Purposes and Limitations. Discovery in this action is likely
23 to involve production of confidential, proprietary, or private information
24 for which special protection from public disclosure and from use for any
25 purpose other than prosecuting this litigation may be warranted.
26 Accordingly, the parties hereby stipulate to and petition the court to
27 enter the following Stipulated Protective Order. The parties
28 acknowledge that this Order does not confer blanket protections on all

1 disclosures or responses to discovery and that the protection it affords
2 from public disclosure and use extends only to the limited information or
3 items that are entitled to confidential treatment under the applicable
4 legal principles.

5 1.2 Good Cause Statement. This action is likely to involve
6 information protected by the Peace Officer Bill of Rights as set forth in
7 California Government Code sections 832.7 and 832.8 for which special
8 protection from public disclosure and from use for any purpose other
9 than prosecution of this action is warranted.

10 Defendants may be producing documents that contain personal
11 and confidential information regarding individuals which information is
12 generally unavailable to the public, including peace officer personnel
13 records. The disclosure of this information to the public may violate
14 those individuals' privacy rights. Defendants contend that peace officers
15 have a federal privilege of privacy in their personnel file records: a
16 reasonable expectation of privacy therein that is underscored, specified,
17 and arguably heightened by the *Pitchess* protective procedure of
18 California law. See *Sanchez v. Santa Ana Police Dept.*, 936 F.2d 1027,
19 1033-1034 (9th Cir. 1990); *Hallon v. City of Stockton*, 2012 U.S. Dist.
20 LEXIS 14665, *2-3, 12-13 (E.D. Cal. 2012) (concluding that "while
21 "[f]ederal law applies to privilege based discovery disputes involving
22 federal claims," the "state privilege law which is consistent with its
23 federal equivalent significantly assists in applying [federal] privilege
24 law to discovery disputes"); Cal. Penal Code §§ 832.7, 832.8; Cal. Evid.
25 Code §§ 1040-1047. The uncontrolled disclosure of such personnel file
26 information can threaten the safety of non-party witnesses, officers, and
27 their families/associates.

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1 Defendants further contend that such personnel file records are
2 restricted from disclosure by the public entity's custodian of records
3 pursuant to applicable California law and that uncontrolled release is
4 likely to result in needless intrusion of officer privacy; impairment in the
5 collection of third-party witness information and statements and related
6 legitimate law enforcement investigations/interests.

7 Defendants also contend that, since peace officers do not have the
8 same rights as other private citizens to avoid giving compelled
9 statements, it is contrary to the fundamental principles of fairness to
10 permit uncontrolled release of officers' compelled statements. See
11 generally *Lybarger v. City of Los Angeles*, 40 Cal.3d 822, 828-830 (1985);
12 cf. U.S. Const., amend V.

13 Defendants contend that law enforcement agencies have federal
14 deliberative-executive process privilege, federal official information
15 privilege, federal law enforcement privilege, and federal attorney-client
16 privilege (and/or attorney work product protection) interests in the
17 personnel files of their peace officers – particularly as to those portions
18 of peace officer personnel files that contain critical self-analysis, internal
19 deliberation/decision-making or evaluation/analysis, or communications
20 for the purposes of obtaining or rendering legal advice or analysis –
21 potentially including but not limited to evaluative/analytical portions of
22 Internal Affairs type records or reports, evaluative/analytical portions of
23 supervisory records or reports, and/or reports prepared at the direction
24 of counsel, or for the purpose of obtaining or rendering legal advice. See
25 *Sanchez*, 936 F.2d at 1033-1034; *Maricopa Audubon Soc'y v. United*
26 *States Forest Serv.*, 108 F.3d 1 089, 1092-1095 (9th Cir. 1997); *Kelly v.*
27 *City of San Jose*, 114 F.R.D. 654, 668-671 (N.D. Cal. 1987); *Admiral Ins.*
28 *Co. v. United States Dist. Ct.*, 881 F.2d 1486, 1492, 1495 (9th Cir. 1988).

1 Additionally, Defendants may be producing reports obtained from
2 the California Law Enforcement Telecommunications System (CLETS),
3 which reports are generally unavailable to the public. The disclosure of
4 this information to the public may jeopardize the security of CLETS, the
5 effectiveness of law enforcement efforts that rely on CLETS, and the
6 safety of law enforcement officers using CLETS. Defendants may also be
7 producing documents concerning confidential internal policies, which
8 documents are generally unavailable to the public. The disclosure of this
9 information may jeopardize the security of the State's operations, and
10 jeopardize the safety of peace officers. In addition, defendants may be
11 producing investigation reports which are generally unavailable to the
12 public, the disclosure of which could violate individuals' privacy rights
13 and jeopardize the safety of officers. Finally, documents related to the
14 incident at issue in this matter were produced in response to a
15 California Public Records Act request which may be used in this case.

16 The parties jointly contend that there is typically a particularized
17 need for protection as to any medical or psychotherapeutic records,
18 because of the privacy interests at stake. Because of these sensitive
19 interests, a court order should address these documents rather than a
20 private agreement between the parties.

21 Accordingly, to expedite the flow of information, to facilitate the
22 prompt resolution of disputes over confidentiality of discovery materials,
23 to adequately protect information the parties are entitled to keep
24 confidential, to ensure that the parties are permitted reasonable
25 necessary uses of such material in preparation for and in the conduct of
26 trial, to address their handling at the end of the litigation, and serve the
27 ends of justice, a protective order for such information is justified in this
28 matter. It is the intent of the parties that information will not be

1 designated as confidential for tactical reasons and that nothing be so
2 designated without a good faith belief that it has been maintained in a
3 confidential, non-public manner, and there is good cause why it should
4 not be part of the public record of this case.

5 1.3 Acknowledgment of Procedure for Filing Under Seal. The
6 parties further acknowledge, as set forth in Section 12.3, below, that this
7 Stipulated Protective Order does not entitle them to file confidential
8 information under seal; Local Rule 79-5 sets forth the procedures that
9 must be followed and the standards that will be applied when a party
10 seeks permission from the court to file material under seal.

11 There is a strong presumption that the public has a right of access
12 to judicial proceedings and records in civil cases. In connection with
13 non-dispositive motions, good cause must be shown to support a filing
14 under seal. *See Kamakana v. City and Cnty. of Honolulu*, 447 F.3d
15 1172, 1176 (9th Cir. 2006), *Phillips ex rel. Ests. of Byrd v. Gen. Motors*
16 *Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002), *Makar-Welbon v. Sony*
17 *Elecs., Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
18 protective orders require good cause showing), and a specific showing of
19 good cause or compelling reasons with proper evidentiary support and
20 legal justification, must be made with respect to Protected Material
21 that a party seeks to file under seal. The parties' mere designation of
22 Disclosure or Discovery Material as CONFIDENTIAL does not—
23 without the submission of competent evidence by declaration,
24 establishing that the material sought to be filed under seal qualifies as
25 confidential, privileged, or otherwise protectable—constitute good
26 cause.

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1 Further, if a party requests sealing related to a dispositive motion
2 or trial, then compelling reasons, not only good cause, for the sealing
3 must be shown, and the relief sought shall be narrowly tailored to serve
4 the specific interest to be protected. *See Pintos v. Pac. Creditors Ass'n*,
5 605 F.3d 665, 677–79 (9th Cir. 2010). For each item or type of
6 information, document, or thing sought to be filed or introduced under
7 seal in connection with a dispositive motion or trial, the party seeking
8 protection must articulate compelling reasons, supported by specific
9 facts and legal justification, for the requested sealing order. Again,
10 competent evidence supporting the application to file documents under
11 seal must be provided by declaration.

12 Any document that is not confidential, privileged, or otherwise
13 protectable in its entirety will not be filed under seal if the confidential
14 portions can be redacted. If documents can be redacted, then a
15 redacted version for public viewing, omitting only the confidential,
16 privileged, or otherwise protectable portions of the document, shall be
17 filed. Any application that seeks to file documents under seal in their
18 entirety should include an explanation of why redaction is not feasible.

19 **2. DEFINITIONS**

20 2.1 Action: This pending federal lawsuit, *Sandra Kirkman, et al.*
21 *v. Officer Ramon Silva*, et al., United States District Court, Central
22 District, Case No. 2:23-cv-07532-DMG-SSC.

23 2.2 Challenging Party: a Party or Non-Party that challenges the
24 designation of information or items under this Order.

25 2.3 “CONFIDENTIAL” Information or Items: information
26 (regardless of how it is generated, stored or maintained) or tangible
27 things that qualify for protection under Rule 26(c) of the Federal Rules
28 of Civil Procedure, and as specified above in the Good Cause Statement.

1 2.4 Counsel: Outside Counsel of Record and House Counsel (as
2 well as their support staff).

3 2.5 Designating Party: a Party or Non-Party that designates
4 information or items that it produces in disclosures or in responses to
5 discovery as “CONFIDENTIAL.”

6 2.6 Disclosure or Discovery Material: all items or information,
7 regardless of the medium or manner in which it is generated, stored, or
8 maintained (including, among other things, testimony, transcripts, and
9 tangible things), that are produced or generated in disclosures or
10 responses to discovery in this matter.

11 2.7 Expert: a person with specialized knowledge or experience in
12 a matter pertinent to the litigation who has been retained by a Party or
13 its counsel to serve as an expert witness or as a consultant in this
14 Action.

15 2.8 Final Disposition: the later of (1) dismissal of all claims and
16 defenses in this Action, with or without prejudice; and (2) final judgment
17 herein after the completion and exhaustion of all appeals, rehearings,
18 remands, trials, or reviews of this Action, including the time limits for
19 filing any motions or applications for extension of time pursuant to
20 applicable law.

21 2.9 In-House Counsel: attorneys who are employees of a party to
22 this Action. In-House Counsel does not include Outside Counsel of
23 Record or any other outside counsel.

24 2.10 Non-Party: any natural person, partnership, corporation,
25 association, or other legal entity not named as a Party to this action.

26 2.11 Outside Counsel of Record: attorneys who are not employees
27 of a party to this Action but are retained to represent or advise a party
28 to this Action and have appeared in this Action on behalf of that party or

1 are affiliated with a law firm which has appeared on behalf of that
2 party, and includes support staff.

3 2.12 Party: any party to this Action, including all of its officers,
4 directors, employees, consultants, retained experts, and Outside Counsel
5 of Record (and their support staffs).

6 2.13 Producing Party: a Party or Non-Party that produces
7 Disclosure or Discovery Material in this Action.

8 2.14 Professional Vendors: persons or entities that provide
9 litigation- support services (e.g., photocopying, videotaping, translating,
10 preparing exhibits or demonstrations, and organizing, storing, or
11 retrieving data in any form or medium) and their employees and
12 subcontractors.

13 2.15 Protected Material: any Disclosure or Discovery Material
14 that is designated as “CONFIDENTIAL.”

15 2.16 Receiving Party: a Party that receives Disclosure or
16 Discovery Material from a Producing Party.

17 **3. SCOPE**

18 The protections conferred by this Stipulation and Order cover not
19 only Protected Material (as defined above), but also (1) any information
20 copied or extracted from Protected Material; (2) all copies, excerpts,
21 summaries, or compilations of Protected Material; and (3) any
22 testimony, conversations, or presentations by Parties or their Counsel
23 that might reveal Protected Material.

24 Any use of Protected Material at trial shall be governed by the
25 orders of the trial judge. This Stipulated Protective Order does not
26 govern the use of Protected Material at trial.

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4. TRIAL AND DURATION

The terms of this Stipulated Protective Order apply through Final Disposition of the Action.

ONCE A CASE PROCEEDS TO TRIAL, INFORMATION THAT WAS DESIGNATED AS CONFIDENTIAL OR MAINTAINED PURSUANT TO THIS STIPULATED PROTECTIVE ORDER AND USED OR INTRODUCED AS AN EXHIBIT AT TRIAL BECOMES PUBLIC AND WILL BE PRESUMPTIVELY AVAILABLE TO ALL MEMBERS OF THE PUBLIC, INCLUDING THE PRESS, UNLESS COMPELLING REASONS SUPPORTED BY SPECIFIC FACTUAL FINDINGS TO PROCEED OTHERWISE ARE MADE TO THE TRIAL JUDGE IN ADVANCE OF THE TRIAL. SEE KAMAKANA, 447 F.3D AT 1180–81 (DISTINGUISHING “GOOD CAUSE” SHOWING FOR SEALING DOCUMENTS PRODUCED IN DISCOVERY FROM “COMPELLING REASONS” STANDARD WHEN MERITS-RELATED DOCUMENTS ARE PART OF COURT RECORD). ACCORDINGLY, FOR SUCH MATERIALS, THE TERMS OF THIS STIPULATED PROTECTIVE ORDER DO NOT EXTEND BEYOND THE COMMENCEMENT OF THE TRIAL.

Even after Final Disposition of this litigation, the confidentiality obligations imposed by this Stipulated Protective Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written

1 communications that qualify so that other portions of the material,
2 documents, items, or communications for which protection is not
3 warranted are not swept unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited.
5 Designations that are shown to be clearly unjustified or that have been
6 made for an improper purpose (e.g., to unnecessarily encumber the case
7 development process or to impose unnecessary expenses and burdens
8 on other parties) may expose the Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or
10 items that it designated for protection do not qualify for protection, that
11 Designating Party must promptly notify all other Parties that it is
12 withdrawing the inapplicable designation.

13 **5.2 Manner and Timing of Designations.** Except as otherwise
14 provided in this Stipulated Protective Order (*see, e.g.*, second paragraph
15 of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
16 or Discovery Material that qualifies for protection under this Stipulated
17 Protective Order must be clearly so designated before the material is
18 disclosed or produced.

19 Designation in conformity with this Stipulated Protective Order
20 requires:

21 (a) for information in documentary form (e.g., paper or
22 electronic documents, but excluding transcripts of depositions or other
23 pretrial or trial proceedings), that the Producing Party affix at a
24 minimum, the legend "CONFIDENTIAL" to each page that contains
25 protected material. If only a portion or portions of the material on a
26 page qualifies for protection, the Producing Party also must clearly
27 identify the protected portion(s) (e.g., by making appropriate markings
28 in the margins). The Parties shall make best efforts to place the

1 confidentiality legend in the margins of the designated document
2 whenever possible so as not to obstruct or otherwise impact the
3 legibility of the document.

4 A Party or Non-Party that makes original documents available for
5 inspection need not designate them for protection until after the
6 inspecting Party has indicated which documents it would like copied
7 and produced. During the inspection and before the designation, all of
8 the material made available for inspection shall be deemed
9 CONFIDENTIAL. After the inspecting Party has identified the
10 documents it wants copied and produced, the Producing Party must
11 determine which documents, or portions thereof, qualify for protection
12 under this Stipulated Protective Order. Then, before producing the
13 specified documents, the Producing Party must affix the
14 “CONFIDENTIAL” legend to each page that contains Protected
15 Material. If only a portion or portions of the material on a page
16 qualifies for protection, the Producing Party also must clearly identify
17 the protected portion(s) (e.g., by making appropriate markings in the
18 margins). The Parties shall make best efforts to place the
19 confidentiality legend in the margins of the designated document
20 whenever possible so as not to obstruct or otherwise impact the
21 legibility of the document.

22 (b) for testimony given in depositions that the Designating
23 Party identify the Disclosure or Discovery Material on the record, before
24 the close of the deposition all protected testimony.

25 (c) for information produced in some form other than
26 documentary and for any other tangible items, that the Producing Party
27 affix in a prominent place on the exterior of the container or containers
28 in which the information is stored the “CONFIDENTIAL” legend. If

1 only a portion or portions of the information warrants protection, the
2 Producing Party, to the extent practicable, shall identify the protected
3 portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an
5 inadvertent failure to designate qualified information or items does not,
6 standing alone, waive the Designating Party's right to secure protection
7 under this Order for such material. Upon timely correction of a
8 designation, the Receiving Party must make reasonable efforts to assure
9 that the material is treated in accordance with the provisions of this
10 Stipulated Protective Order.

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1 Timing of Challenges. Any Party or Non-Party may
13 challenge a designation of confidentiality at any time that is consistent
14 with the court's Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the
16 dispute resolution process under Local Rule 37.1 et seq. and with
17 Section 2 of Judge Christensen's Civil Procedures titled "Brief Pre-
18 Discovery Motion Conference."¹

19 6.3 The burden of persuasion in any such challenge proceeding
20 shall be on the Designating Party. Frivolous challenges, and those
21 made for an improper purpose (e.g., to harass or impose unnecessary
22 expenses and burdens on other parties) may expose the Challenging
23 Party to sanctions. Unless the Designating Party has waived or
24 withdrawn the confidentiality designation, all parties shall continue to
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27 ¹ Judge Christensen's Procedures are available at
28 <https://www.cacd.uscourts.gov/honorable-stephanie-s-christensen>.

1 afford the material in question the level of protection to which it is
2 entitled under the Producing Party's designation until the court
3 rules on the challenge.

4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 7.1 Basic Principles. A Receiving Party may use Protected
6 Material that is disclosed or produced by another Party or by a Non-
7 Party in connection with this Action only for prosecuting, defending, or
8 attempting to settle this Action. Such Protected Material may be
9 disclosed only to the categories of persons and under the conditions
10 described in this Order. When the Action reaches a Final Disposition, a
11 Receiving Party must comply with the provisions of section 13 below.

12 Protected Material must be stored and maintained by a Receiving
13 Party at a location and in a secure manner that ensures that access is
14 limited to the persons authorized under this Stipulated Protective
15 Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

17 Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or
19 item designated "CONFIDENTIAL" only:

20 (a) to the Receiving Party's Outside Counsel of Record in this
21 Action, as well as employees of said Outside Counsel of Record to whom
22 it is reasonably necessary to disclose the information for this Action;

23 (b) to the officers, directors, and employees (including House
24 Counsel) of the Receiving Party to whom disclosure is reasonably
25 necessary for this Action;

26 (c) to Experts (as defined in this Order) of the Receiving Party
27 to whom disclosure is reasonably necessary for this Action and who
28 have signed the "Acknowledgment and Agreement to Be Bound"

1 (Exhibit A);

2 (d) to the court and its personnel;

3 (e) to court reporters and their staff;

4 (f) to professional jury or trial consultants, mock jurors, and
5 Professional Vendors to whom disclosure is reasonably necessary for
6 this Action and who have signed the “Acknowledgment and Agreement
7 to Be Bound” (Exhibit A);

8 (g) to the author or recipient of a document containing the
9 information or a custodian or other person who otherwise possessed or
10 knew the information;

11 (h) during their depositions, to witnesses, and attorneys for
12 witnesses, in the Action to whom disclosure is reasonably necessary,
13 provided: (1) the deposing party requests that the witness sign the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and (2) the
15 witness will not be permitted to keep any confidential information
16 unless they sign the “Acknowledgment and Agreement to Be Bound”
17 (Exhibit A), unless otherwise agreed by the Designating Party or
18 ordered by the court. Pages of transcribed deposition testimony or
19 exhibits to depositions that reveal Protected Material may be
20 separately bound by the court reporter and may not be disclosed to
21 anyone except as permitted under this Stipulated Protective Order; and

22 (i) to any mediator or settlement officer, and their supporting
23 personnel, mutually agreed upon by any of the parties engaged in
24 settlement discussions.

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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in
4 other litigation that compels disclosure of any information or items
5 designated in this Action as “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such
7 notification shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the
9 subpoena or order to issue in the other litigation that some or all of the
10 material covered by the subpoena or order is subject to this Protective
11 Order. Such notification shall include a copy of this Stipulated
12 Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to
14 be pursued by the Designating Party whose Protected Material may be
15 affected.

16 If the Designating Party timely seeks a protective order, the
17 Party served with the subpoena or court order shall not produce any
18 information designated in this action as “CONFIDENTIAL” before a
19 determination by the court from which the subpoena or order issued,
20 unless the Party has obtained the Designating Party’s permission. The
21 Designating Party shall bear the burden and expense of seeking
22 protection in that court of its confidential material and nothing in these
23 provisions should be construed as authorizing or encouraging a
24 Receiving Party in this Action to disobey a lawful directive from
25 another court.

26 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO**
27 **BE PRODUCED IN THIS LITIGATION**

28 9.1 Application. The terms of this Stipulated Protective Order

1 are applicable to information produced by a Non-Party in this Action
2 and designated as “CONFIDENTIAL.” Such information produced by
3 Non-Parties in connection with this litigation is protected by the
4 remedies and relief provided by this Order. Nothing in these provisions
5 should be construed as prohibiting a Non-Party from seeking additional
6 protections.

7 9.2 Notification. In the event that a Party is required, by a valid
8 discovery request, to produce a Non-Party’s confidential information in
9 its possession, and the Party is subject to an agreement with the Non-
10 Party not to produce the Non-Party’s confidential information, then the
11 Party shall:

12 (a) promptly notify in writing the Requesting Party and the
13 Non-Party that some or all of the information requested is subject to a
14 confidentiality agreement with a Non-Party;

15 (b) make the information requested available for inspection by
16 the Non-Party, if requested.

17 9.3 Conditions of Production. If the Non-Party fails to seek a
18 protective order from this court within 14 days of receiving the notice
19 and accompanying information, the Receiving Party may produce the
20 Non-Party’s confidential information responsive to the discovery
21 request. If the Non-Party timely seeks a protective order, the Receiving
22 Party shall not produce any information in its possession or control that
23 is subject to the confidentiality agreement with the Non-Party before a
24 determination by the court. Absent a court order to the contrary, the
25 Non-Party shall bear the burden and expense of seeking protection in
26 this court of its Protected Material.

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1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED**
2 **MATERIAL**

3 If a Receiving Party learns that, by inadvertence or otherwise, it
4 has disclosed Protected Material to any person or in any circumstance
5 not authorized under this Stipulated Protective Order, the Receiving
6 Party must immediately (a) notify in writing the Designating Party of
7 the unauthorized disclosures, (b) use its best efforts to retrieve all
8 unauthorized copies of the Protected Material, (c) inform the person or
9 persons to whom unauthorized disclosures were made of all the terms
10 of this Order, and (d) request such person or persons to execute the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A).

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
13 **OTHERWISE PROTECTED MATERIAL**

14 When a Producing Party gives notice to Receiving Parties that
15 certain inadvertently produced material is subject to a claim of
16 privilege or other protection, the obligations of the Receiving Parties
17 are those set forth in Rule 26(b)(5)(B) of the Federal Rules of Civil
18 Procedure. This provision is not intended to modify whatever
19 procedure may be established in an e-discovery order that provides for
20 production without prior privilege review. Pursuant to Rules 502(d)
21 and (e) of the Federal Rules of Evidence, insofar as the parties reach an
22 agreement on the effect of disclosure of a communication or information
23 covered by the attorney-client privilege or work product protection, the
24 parties may incorporate their agreement in the stipulated protective
25 order submitted to the court.

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1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Stipulated
3 Protective Order abridges the right of any person to seek its
4 modification by the court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the
6 entry of this Stipulated Protective Order no Party waives any right it
7 otherwise would have to object to disclosing or producing any
8 information or item on any ground not addressed in this Stipulated
9 Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this
11 Stipulated Protective Order.

12 12.3 Filing Protected Material. A Party that seeks to file under
13 seal any Protected Material must comply with Local Rule 79-5.
14 Protected Material may only be filed under seal pursuant to a court
15 order authorizing the sealing of the specific Protected Material at issue.
16 If a Party's request to file Protected Material under seal is denied by
17 the court, then the Receiving Party may file the information in the
18 public record unless otherwise instructed by the court.

19 **13. FINAL DISPOSITION**

20 After the Final Disposition of this Action, as defined in paragraph
21 4, within 60 days of a written request by the Designating Party, each
22 Receiving Party must return all Protected Material to the Producing
23 Party or destroy such material. As used in this subdivision, "all
24 Protected Material" includes all copies, abstracts, compilations,
25 summaries, and any other format reproducing or capturing any of the
26 Protected Material. Whether the Protected Material is returned or
27 destroyed, the Receiving Party must submit a written certification to
28 the Producing Party (and, if not the same person or entity, to the

1 Designating Party) by the 60 day deadline that (1) identifies (by
2 category, where appropriate) all the Protected Material that was
3 returned or destroyed and (2) affirms that the Receiving Party has not
4 retained any copies, abstracts, compilations, summaries or any other
5 format reproducing or capturing any of the Protected Material.

6 Notwithstanding this provision, Counsel is entitled to retain an
7 archival copy of all pleadings, motion papers, trial, deposition, and
8 hearing transcripts, legal memoranda, correspondence, deposition and
9 trial exhibits, expert reports, attorney work product, and consultant
10 and expert work product, even if such materials contain Protected
11 Material. Any such archival copies that contain or constitute Protected
12 Material remain subject to this Protective Order as set forth in Section
13 4.

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1 **14. VIOLATION**

2 Any violation of this Stipulated Protective Order may be punished
3 by any and all appropriate measures including, without limitation,
4 contempt proceedings and/or monetary sanctions.

5 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

6 DATED: November 3, 2023

/s/ Shannon Leap

Dale K. Galipo, Esq.

Shannon Leap, Esq.

Attorneys for Plaintiffs

11 DATED: November 3, 2023

/s/ Ashley Reyes

Ashley N. Reyes, Esq.

Attorney for Defendants

15 **ATTESTATION CLAUSE**

16 Pursuant to Local Rule 5-4.3.4(a)(2)(i), the ECF filer set forth below,
17 Ashley Reyes, attests that all other signatories listed, and on whose behalf the filing
18 is submitted, concur in the filing's content and have authorized the filing.

19 Dated: November 3, 2023

Respectfully submitted,

20 ROB BONTA
21 Attorney General of California
22 CATHERINE A. WOODBRIDGE
23 Supervising Deputy Attorney General

/s/ Ashley Reyes

24 ASHLEY REYES
25 Deputy Attorney General
26 Attorneys for Defendants, Officer
27 Ramon Silva and the State of
28 California, acting by and through the
California Highway Patrol

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: _____

STEPHANIE S. CHRISTENSEN

United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[print or type full name]**, of
 _____ **[print or type full address]**, declare under penalty
 of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court
 for the Central District of California on **[date]** in the case of Sandra
 Kirkman, et al. v. Officer Ramon Silva, et al., United States District
 Court, Central District, Case No. 2:23-cv-07532-DMG-SSC. I agree to
 comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any
 information or item that is subject to this Stipulated Protective Order to
 any person or entity except in strict compliance with the provisions of
 this Order.

I further agree to submit to the jurisdiction of the United States
 District Court for the Central District of California for the purpose of
 enforcing the terms of this Stipulated Protective Order, even if such
 enforcement proceedings occur after termination of this action. I hereby
 appoint _____ **[print or type full name]** of
 _____ **[print or type full address and telephone number]** as
 my California agent for service of process in connection with this action
 or any proceedings related to enforcement of this Stipulated Protective
 Order.

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Date:

City and State where sworn

and signed:

Printed name:

Signature:

LA2023603259
95529437.docx

CERTIFICATE OF SERVICE

Case Name: *Sandra Kirkman, et al. v. State
of California, et al.*

No. 2:23-cv-07532-DMG-SSC

I hereby certify that on November 6, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STIPULATED PROTECTIVE ORDER

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 6, 2023, at Fresno, California.

Carrie Vue
Declarant

/s/ Carrie Vue
Signature